



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Application of California-American Water
Company (U210W) for Approval of the Monterey
Peninsula Water Supply Project and
Authorization to Recover All Present and Future
Costs in Rates.

A.12-04-019
(Filed April 23, 2012)

JOINT PROPOSAL TO COMPLETE RECORD FOR PHASE 1 AND PHASE 2

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JOINT PROPOSAL TO COMPLETE RECORD FOR PHASE 1 AND PHASE 2

I. INTRODUCTION

Pursuant to the Administrative Law Judge's Ruling, issued by email on October 13, 2015 ("Ruling"),¹ California-American Water Company ("California American Water"); City of Pacific Grove, Coalition of Peninsula Businesses; County of Monterey; Landwatch Monterey County ("Landwatch"); Monterey County Farm Bureau ("Farm Bureau"); Monterey County Water Resources Agency; Monterey Peninsula Regional Water Authority ("Water Authority"); Monterey Peninsula Water Management District ("MPWMD"); Monterey Regional Water Pollution Control Agency; Office of Ratepayer Advocates; Planning and Conservation League Foundation; Public Water Now (formerly Citizens for Public Water); Salinas Valley Water Coalition ("SVWC"); Sierra Club; and Surfrider Foundation ("Surfrider")² (collectively the

¹ Administrative Law Judge's Ruling Regarding the Filing of Proposed Schedules by October 20, 2015, sent by email on October 13, 2015.

² California American Water emailed the service list (without decisionmakers) regarding the joint proposal, but never received a response from California Unions for Reliable Energy, and Latino Water-Use Coalition – Monterey Peninsula, Latino Seaside Merchants Association, and Comunidad en Accion.

“Joint Parties”)³ submit this Joint Proposal to Complete the Record for Phase 1 and Phase 2 (“Joint Proposal”). The Ruling directed parties to file and serve proposed schedules that will complete the Phase 2 record by April to May 2016 along with completing all or as much of the Phase 1 record as possible by the same April to May 2016 timeframe.⁴ The Ruling also directed parties to identify what evidence, if any, must be updated, and explain why that evidence must be updated.⁵ The Joint Parties conferred and propose the updates and schedule as set forth below.

II. PROPOSED UPDATES

The Ruling requested parties to identify evidence that should be updated. Given the critical water supply constraints for the Monterey District which the Commission has recognized,⁶ the Joint Parties recommend that the Commission only reopen the record for a very discrete set of items that are necessary to update due to changed circumstances.

For Phase 1, in addition to updating the record on the desalination project costs, the Joint Parties propose to update the record on the issues of 1) demand and supply related to plant sizing; 2) brine discharge; and 3) return water to the Salinas Valley Groundwater Basin (“SVGB”).

First, as noted in the ALJ’s Ruling, parties requested an update on demand in the region. Such evidence would include the last three years of system delivery data, evidence regarding the context and implications of that data, and evidence regarding any other changes in present

³ California American Water files this response on behalf of the above-named parties and provides electronic signatures in accordance with Rule 1.8 of the Commission’s Rules of Practice and Procedure.

⁴ See Ruling.

⁵ *Id.*

⁶ See D.10-12-016, at pp. 27 and 55 (concluding that “there is an urgent need to find an alternative water supply to replace Cal-Am’s water supplies that are drawn from the Carmel River” and that a delay in doing so could lead to severe water restrictions and rationing.).

demand as compared to the demand reflected by the evidence introduced at the initial evidentiary hearing in this proceeding. The Joint Parties intend, without limitation, that California American Water will introduce testimony regarding the data that is now available, including a technical memorandum on the desalination plant sizing that reflects that data.

Second, the Large Settlement Agreement, submitted to the Commission on July 31, 2013,⁷ indicates that Surfrider's support for the granting of a Certificate of Public Convenience and Necessity ("CPCN") is contingent, in part, upon a reasonable resolution of its concerns relating to the potential environmental effects attendant to the brine discharge from the desalination project. In recent months the Water Authority has initiated discussions with Surfrider to explore options for resolving Surfrider's concerns, which could include a proposal for long-term monitoring, and if necessary, further mitigation measures. The Joint Parties propose that the parties be authorized to submit evidence regarding the appropriateness, scope, and cost of (a) post-approval monitoring of the impacts of brine disposal on the marine environment and organisms and (b) measures to reduce or avoid impacts detected by such monitoring.

Third, with respect to the return of water to the SVGB, California American Water and other Joint Parties indicate that they have explored additional options to return water and intend to present new information that was not known or available at the time of prior testimony. For example, the option to return water through injection wells was dismissed in the Draft

⁷ See Settling Parties' Motion to Approve Settlement Agreement, filed July 31, 2013, Attachment A, Settlement Agreement of California-American Water Company, Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, County of Monterey, Division of Ratepayer Advocates, Landwatch Monterey County, Monterey County Farm Bureau, Monterey County Water Resources Agency, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, Monterey Regional Water Pollution Control Agency, Planning and Conservation League Foundation, Salinas Valley Water Coalition, Sierra Club, and Surfrider Foundation (henceforth "Settlement Agreement"), §3.1(a).

Environmental Impact Report (“EIR”), and the return option under the Groundwater Replenishment (“GWR”) variant does not operate in normal to wet years.⁸ As such, California American Water seeks to consider another return location and option.

The Joint Parties do not all agree on whether evidence should be submitted on the basis for California American Water to provide return water to the SVGB and, if so, how much, when, where and upon what terms with the recipient(s). Two positions on this issue have arisen among the parties.

(1) SVWC, Farm Bureau, and Landwatch request that the Commission allow the submission of evidence on whether California American Water has a return water obligation, the basis for the return obligation, and whether such an obligation may constrain the form or manner of that return. These parties assert that evidence of groundwater effects may be relevant to how much, when, where and upon what terms return water should be provided.

SVWC, Farm Bureau, and Landwatch take the following positions: Previous briefing and the opinion of the State Water Resources Control Board established that the factual question as to potential harm to groundwater rights remains open and must be resolved with reference to evidence that was not available at the time of the evidentiary hearings, including data from a new hydrogeological investigation, test well data, and modeling information. Since then, the MPWSP’s groundwater production has been estimated through computer modeling. Although that modeling was used to support development of a CEQA impacts analysis in the Commission’s Draft EIR for the MPWSP, the Draft EIR correctly acknowledges that the determination of significant impacts under CEQA is not necessarily the determination of harm to

⁸ Draft Environmental Impact Report, released April 30, 2015, §7.10.3.2. California American Water included in its application the possibility of direct injecting the return water through a well located on the MPWSP site. Exhibit CA-6, Direct Testimony of Richard C. Svindland, p. 26.

water rights. Use of the MPWSP's expected groundwater pumping to perform a CEQA effects analysis is not an acceptable reason to exclude such evidence from an evidentiary proceeding on return water. For example, the CEQA process does not allow the testing of evidence through cross-examination. SVWC, Farm Bureau, and Landwatch submit that it would be unfair to allow parties like California American Water to build an evidentiary record on return water feasibility without allowing evidence on the need to provide return water in the first place, how much, when, where and upon what terms. Without factual evidence as to the issue of potential harm to water rights, parties will be unable to brief the legal and policy issues related to the CPCN.

(2) California American Water, the Water Authority, and MPWMD (and possibly other parties) do not oppose the request by LandWatch and others to be afforded an opportunity to present evidence on the potential impacts of the source water wells on the SVGB in relation to return water requirements, provided that the parties seeking to submit such evidence make a preliminary showing that the evidence is new evidence not available at the time of the previous evidentiary proceeding in 2013 and so long as it is evidence outside the Draft EIR. Moreover, because of concerns related to future delay, California American Water, the Water Authority, and MPWMD (and possibly other parties) believe that any such evidence must be included within the Phase I evidentiary proceeding concluding with the April 2016 evidentiary hearing. These parties request, that, due to timing concerns, the Commission make clear that the record on the Basin-impact /return water issue should be closed at the conclusion of this evidentiary phase and should not be reopened based upon new evidence presented in the re-circulated Draft EIR, consistent with the Commission's prior rulings that hearings will not be based upon environmental issues. California American Water, the Water Authority, and MPWMD (and possibly other parties) contend that any objections to the DEIR should be addressed in comments

to the DEIR/DEIS, not in a reopening of the evidentiary record, and that the evidentiary record should be closed after the evidentiary hearings in April 2016.

For Phase 2, the Commission's review will include the assessment of the GWR Project to determine whether certain findings can be made concerning schedule, cost, benefits, and feasibility of the GWR Project (referred to as the "GWR Decision"). The Joint Parties propose that the nine criteria in the Settlement Agreement,⁹ upon which the Commission should base its GWR Decision, be the subject of evidentiary hearings.

III. PROPOSED SCHEDULE

The Joint Parties propose the schedules in Table 1 below for Phase 1 and Phase 2 issues, and urge that while some of the Phase 1 and Phase 2 milestones (*e.g.*, the evidentiary hearings) run concurrently, the two phases should be kept separate and independent and run on parallel tracks. As shown below, the Joint Parties request that the Commission provide the opportunity for legal and policy briefs on Phase 1 issues following the issuance of the combined Draft EIR/ Draft Environmental Impact Statement ("EIS"). Joint Parties propose that opening briefs be due 15 days and reply briefs be due 30 days after the deadline for the comments on the Draft EIR/EIS. The proposed schedule includes the possibility of parties filing motions to reopen the record, if necessary, after publication of the FEIR. Each of the Joint Parties reserves the right to file such a motion or object to any motions.

Table 1. Proposed Schedules for Phase 1 and Phase 2

Date	Phase 1	Phase 2
December 15, 2015	Supplemental testimony with updated costs concerning the desalination project	

⁹ Settlement Agreement, §§4.1(a); 4.2

January 22, 2016	Supplemental testimony on demand and supply, brine discharge and return water	Testimony on Phase 2
January and February	Phase 1 settlement discussions	Phase 2 settlement discussions
March 22, 2016	Concurrent rebuttal testimony	Concurrent rebuttal testimony
April 14- 15, 2016 ¹⁰	Evidentiary hearings for Phase 2 and on Phase 1 updates	Evidentiary hearings for Phase 2 and on Phase 1 updates
May 2016	Continued Phase 1 settlement discussions;	Continued Phase 2 settlement discussions until May 15; Opening Brief on Phase 2
May 2016		Reply Brief on Phase 2 (2 weeks following opening brief)
July 2016		Target for Phase 2 Proposed Decision*
August 2016		Target for Commission action on Phase 2 decision*
TBD	CPUC's issuance of combined Draft EIR/EIS	
TBD	Comments on Combined DEIR/DEIS	
15 days after close of DEIR/DEIS Comment Period	Opening Legal and Policy Brief	
30 days after close of DEIR/DEIS Comment Period	Reply Legal and Policy Brief	

*The unopposed Joint Motion to Modify the Phase 2 Schedule and Comments on Cost Updates, filed October 8, 2015, supports the issuance of a decision on Phase 2 issues prior to the issuance of a decision resolving Phase 1 issues, so long as certain conditions are met.

IV. CONCLUSION

The Joint Parties request that the Commission hold Phase 1 and Phase 2 evidentiary hearings subject to the issues and proposed schedules set forth herein.

Respectfully submitted,

¹⁰ Joint Parties have not done an extensive survey of the parties' availability; however, at least three parties have indicated that their counsel have conflicts in early April 2016 and certain parties are unavailable between April 18, 2016 and May 12, 2016.

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